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No. 00-482

IN THE

Supreme Court of the United States

INTERNATIONAL BUSINESS MACHINES CORP.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On A Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

SUPPLEMENTAL BRIEF FOR THE PETITIONER

Concerning the December 19, 2000 Decision of the United States Court of Appeals for the Fourth Circuit in *Mary Helen Coal Corp.* v. *Hudson*

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On December 19, 2000, Chief Judge Harvey Wilkinson issued an unanimous decision for the United States Court of Appeals for the Fourth Circuit in *Mary Helen Coal Corp.* v. *Hudson*, 2000 WL 1854053 (4th Cir. Dec. 19, 2000)[1] that stands in direct conflict with the decision of the United States Court of Appeals for the Federal Circuit in this case, for which a petition for a writ of certiorari has been filed, and is scheduled for this Court's consideration on January 5, 2001. See *International Business Machines Corp.* v. *United States*, 201 F.3d 1367 (Fed. Cir. 2000), *petition for certiorari filed*,

[1] This case is also reported at http://www.law.emory.edu/4circuit/dec2000/992181.P.html.

69 U.S.L.W. 3259 (U.S. Sept. 28, 2000) (No. 00-482). The relevance and importance of *Mary Helen Coal Corp.* to the pending petition cannot be overstated.[2]

As a result of *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998), a federal district court awarded Mary Helen Coal Corp. payment of all outstanding premiums collected under the Coal Industry Retiree Benefit Act of 1992, because this Court held that act was unconstitutional. See *Mary Helen Coal Corp.* v. *Hudson*, 57 F. Supp. 2d 318 (E.D. Va. 1999). The district court, however, declined to award Mary Helen Coal Corp. prejudgment interest. *Id.* On December 19, 2000, the United States Court of Appeals for the Fourth Circuit, reversed holding that where money is collected under a law that subsequently is determined to be unconstitutional, the award of prejudgment interest "would simply give full effect to the Supreme Court's decision . . . by providing full compensation for the harms suffered." *Mary Helen Coal Corp.* at 2000 WL 1854053 at *2. That appellate court further reasoned:

> The usual rule that "interest follows principal" is long and well established. See *Phillips* v. *Washington Legal Foundation*, 524 U.S. 156 (1998). See also *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith*, 449 U.S. 155, 162 (1980). . . . Read together, therefore, Eastern and Phillips indicate that Mary Helen receive pre-judgment interest on the premiums it paid. It is undisputed that after Eastern the Trustees had to refund the principal amounts paid. . . . Since the principal belonged to Mary Helen, so too did the interest earned. That the Trustees collected the premiums in good faith does not change the fact that doing so violated Mary Helen's constitutional rights. Thus, to deny an

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[2] Petitioner filed its Reply Brief on December 15, 2000, prior to the issuance of *Mary Helen Coal Corp.* on December 19, 2000.

> award of prejudgment interest would undercut the Supreme Court's jurisprudence.
>
> Prejudgment interest is simply "an element of " Mary Helen's "complete compensation." *Osterneck* v. *Ernst & Whinney*, 489 U.S. 169, 175 (1989).... Thus, an award of prejudgment interest is a critical component of Mary Helen's recovery.
>
> Mary Helen is thus presumptively entitled to an award of prejudgment interest.

Mary Helen Coal Corp., 2000 WL 1854053 at **2-3 (citations omitted).

The United States Court of Appeals for the Fourth Circuit also specifically overruled the district court's refusal to award prejudgment interest in the absence of specific statutory authority, holding that "prejudgment interest is mandated if we are to give meaning to the rule that 'interest follows principal.' *Phillips*, 524 U.S. at 165." *Mary Helen Coal Corp.*, 2000 WL 1854053 at *3. Moreover, the appellate court further declared that "the district court's denial of prejudgment interest was an abuse of discretion 'guided by erroneous legal conclusions.' *Koon* v. *United States*, 518 U.S. 81, 100 (1996)." *Mary Helen Coal Corp.*, 2000 WL 1854053 at *3.

In short, the United States Court of Appeals for the Fourth Circuit in *Mary Helen Coal Corp.* has unanimously and unequivocally held that this Court's jurisprudence in *Eastern* and *Phillips* requires that prejudgment interest must be awarded as a "critical component" of recovery, when monies have been collected pursuant to a law that violates a constitutional mandate.[3] *Id.* By contrast and in direct conflict,

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[3] In the instant case, petitioner is seeking prejudgment interest from 1987 to June 17, 1998, the date of the judgment awarding interest by the United States Court of International Trade in this docket. In addition, petitioner seeks post judgment interest on monies paid under the Harbor

the United States Court of Appeals for the Federal Circuit has unanimously and unequivocally held that no interest, including prejudgment interest, should be awarded where monies have been collected pursuant to a law that violates a constitutional mandate without specific statutory authority from Congress. See *International Business Machines Corp.* v. *United States*, 201 F.3d 1367 (Fed. Cir. 2000).

Therefore, the Court should grant the petition for a writ of certiorari for all the reasons set forth in petitioner's prior briefs and also now resolve a significant and intolerable division among the federal circuit courts of appeal concerning the scope of redress required to remedy a violation of the United States Constitution.

Respectfully submitted,

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Maintenance Tax on exports that were unlawfully retained by Government from June 17, 1998 to date.